IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION NO.21726 of 2004

Between:

Smt. Muppidi Rama Devi, W/o Late Muppidi Ranga Reddy
R/o.H.No.8-2-269/S/39, Sagar Cooperative Housing Society Road No.2, Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 The Commissioner and Special Officer, Municipal Corporation of

Hyderabad.
2 Smt. Rekha Rani, W/o Late Paradesi Naidu
Land Protection Cell, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the order dt.22.11.04 bearing Lr.No.9699/TP/MCH/C5/2004 issued by the 1st respondent as illegal, arbitrary and unconstitutional.

Counsel for the Petitioner: MR.B.VIJAYSEN REDDY

Counsel for the Respondent No.1: SMT. G.JYOTHI KIRAN

Counsel for the Respondent No.2: -----

The Court at the stage of admission made the following:

ORDER:

The petitioner claims to be the absolute owner and possessor of property admeasuring 239.86 sq. yards situated at Sagar Mutually Aided Cooperative Housing Society, Road No.2, Shaikpet village, Banjara Hills, Hyderabad. That after obtaining building permission for construction of commercial shops in the ground floor and residential portions in the first and second floors, she started construction. It is stated that when the subordinates of the District Collector and Mandal Revenue Officer tried to interfere with the construction, she filed O.S.No.2070 of 2002 in the Court of the X Junior Civil Judge, City Civil Court, Hyderabad and obtained injunction order and consequently she proceeded with the further construction. It is her case that despite the interim orders, the respondents are interfering with her possession over the schedule property. In the meanwhile, when the 2nd respondent, who is in no way concerned with the petitioner, with the assistance of the officials of the 1st respondent, came to the property in question and threatened the petitioner with dire consequences and took away the construction equipment, she filed a writ petition No.20660 of 2004, and this Court vide orders dated 16.11.2004 in the said writ petition, directed the 1st respondent not to interfere with the construction activity until the petitioner is intimated by a speaking order of the action proposed to be taken. The grievance of the petitioner is that in violation of the said orders passed by this Court in W.P.No.20660 of 2004, dated 16.11.2004, the 1st respondent issued the impugned order dated 22.11.2004 directing her not to proceed with the construction or excavation work. Hence the writ petition.

Heard the learned counsel for the petitioner and learned Standing Counsel for 1st respondent.

Learned counsel for the petitioner mainly contended that the present impugned order dated 22.11.2004 was passed by the 1st respondent-Commissioner and Special Officer, Municipal Corporation of Hyderabad without giving any notice to the petitioner, which is contrary to the directions of this Court in earlier round of litigation in W.P.No.20660 of 2004, dated 16.11.2004. Learned Standing Counsel appearing for the

1st respondent fairly submitted that no notice, as directed by this Court in W.P.No.20660 of 2004, was given to the petitioner.

Though the petitioner made several allegations against respondent No.2, at the time of hearing of the writ petition, the learned counsel for the petitioner, submitted that he is withdrawing the said allegations in toto. Therefore, the allegations made by the petitioner against the respondent No.2, stand withdrawn.

Be that as it may, it is on record that in the earlier Writ Petition No.20660 of 2004 filed by the petitioner herein against the respondent
Nos.1 and 2 herein and others, this Court by order dated 16-11-2004, after hearing the counsel for respondent-Municipality as well as the petitioner's counsel, passed the following order:

> "Having perused the material available on record and having heard the learned counsel on either side, it is explicitly clear that respondents 1 and 2 are interfering with the construction of the petitioner. Since the petitioner had already obtained an injunction against respondents 1 and 2, it is always open to him to seek the relief against them in the pending suit itself. As the fifth respondent, Commissioner and Special Officer, Municipal Corporation of Hyderabad, is interfering with the construction of the petitioner, on the ground that the permission granted is expired on lapse of one year, contrary to the provisions of the Municipal Corporation Act, it is directed that until the petitioner is intimated the action proposed, and speaking orders are passed, the fifth respondent-Municipal Corporation shall not interfere with the construction of the petitioner, which is proceeded in accordance with the sanctioned plan.
>
> With the above observations, the writ petition is disposed of."

From the above order, it is clear that this Court while disposing of the writ petition directed the 1st respondent-Commissioner and Special Officer, Municipal Corporation of Hyderabad not to interfere with the construction of the petitioner until the petitioner is intimated of the action proposed and speaking orders are passed.

Now the contention of the learned counsel for the petitioner is that the present impugned order was passed contrary to the directions of this Court in W.P.No.20660 of 2004. Learned Standing Counsel appearing for 1st respondent fairly admitted the fact that no notice, as directed by this Court in the said earlier writ petition, was given to the petitioner. Hence, it is clear that the present impugned order is passed contrary to the orders passed by this Court in W.P.No.20660 of 2004, dated 16.11.2004. Therefore, they are liable to be quashed and set aside, more so when it not only violates the directions of this Court passed in earlier writ petition, but also amounts to violation of the principles of natural justice.

In the result, the impugned order dated 22.11.2004 is set aside. However, this order does not preclude the 1st respondent – Commissioner and Special Officer, Municipal Corporation of Hyderabad to pass orders in accordance with the directions given by this Court in earlier Writ Petition No.20660 of 2004, dated 16.11.2004.

Accordingly, the writ petition is disposed of at the stage of admission. No costs.

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(N.V. RAMANA, J)

Date: 08.12.2004

Nsr

To

1 The Commissioner and Special Officer, Municipal Corporation of

Hyderabad.
2 Two CD copies.